UNITED STATES PATENT AND TRADEMARK OFFICE

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BELL, BOYD & LLOYD, LLP
P.O. BOX 1135
CHICAGO, IL 60690

EXAMINER
KIM, TAE K

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *19 December 2007*.
2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-31* is/are pending in the application.
     4a) Of the above claim(s) *1-10* is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) *11-31* is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
     a) ☒ All   b) ☐ Some *   c) ☐ None of:
       1. ☐ Certified copies of the priority documents have been received.
       2. ☐ Certified copies of the priority documents have been received in Application No. _____.
       3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This is in response to the Applicant's response filed on December 19, 2007.

Claims 1 – 10 have been previously cancelled by the Applicant. Applicant has added

Claim 31. Claims 11 – 31, where Claims 11 and 28 are in independent form, are

presented for examination.

Response to Arguments

Applicant's arguments filed on December 19, 2007 have been fully considered

but they are not persuasive. Applicant argued:

a)   Main fails to disclose that the storage of information relating to functional

properties and topological arrangement of network elements relevant to

the provision of a service in a network element database and *assigning*

the information to the service, on establishment and/or modification of the

service. (Emphasis added)

b)   Main fails to disclose that the storage of information relating to functional

properties and topological arrangement of network elements relevant to

the provision of a service in a network element database and assigning

the information to the service, *on establishment and/or modification of the*

service. (Emphasis added)

Examiner respectfully disagrees with applicant's assertions.

1.   With regards to a), Main discloses that the data collected within the databases

are assigned to the service. The Automated SLA (Service Level Agreement) Monitor

extracts job performance data and notifies the user of any problems with a selected SLA

job, *identifies the SLA critical path of which the job is part of*, along with all downstream

dependent jobs, and determines the impact on the SLA of dependent jobs (Col. 2, Lines

29-37). (Emphasis added)

Applicant further argues that the term "service" is distinguishable from the term

"job" as disclosed in Main. However, Main clearly states that a particular job can have a

SLA associated with that job or a group of jobs (Col. 2, Lines 29-37) and accordingly the

terms "job" and "service" are interchangeable.

2.   With regards to b), Main discloses that the data is collected within the databases

on establishment and/or modification of the service. The maintenance workstations are

used by various Production Operations personnel to maintain and create/delete SLAs

(Col. 9, Line 67 – Col. 10, Line 2). Maintaining of SLAs allows for general information to

be entered as well as specific calendar information and job flows for the actual SLA to

be input (Col. 10, Lines 15-18). If a particular SLA is chose, the user has the option of

creating a run calendar for the critical path by selecting and copying all job(s)

associated with the SLA and opening the associated job flow database for updating

information and entering the actual jobs to be monitored (Col. 10, Lines 23-32). The

Production Operations personnel can establish and/or modify SLAs by combining

various computation jobs that are necessitated by a new service that also needs to be

monitored.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

Claims 11 – 14, 18 – 20, 22 –24, 26, and 27 are rejected under 35

U.S.C. 102(b) as being anticipated by U.S. Patent 5,893,905, invented by Anthony

A. Main et al. (hereinafter referenced as "Main").

3.   Regarding Claim 11, Main discloses a method for recognizing reductions in an

expected service capacity in a communication network (Abstract, Fig. 5; system and

method of recognizing job performance discrepancies) comprising of storing information

relating to functional properties and topological arrangement of network elements

relevant to the provision of a service in a network element database and assigning the

information to the service (Abstract; Col. 5, Line 59 – Col. 6, Line 4; system compares

actual performance against SLA, identifies discrepancies, and analyzes the impact to

other jobs in the job stream; multiple databases to stores data specifying job flow for

each SLA collected, high level qualifiers/application groups of SLA jobs that are to be

monitored each day, prior run data and clocktime data), on establishment and/or

modification of the service (Col. 2, Lines 38-42; actual performance of jobs in previous

executions are recorded and stored to determine average run time), providing the

information stored in the network element database for a service quality and/or error

monitoring device (Col. 2, Lines 35-37; collected data of previous executions are

compare with current performances), comparing recorded measured values to the

information stored in the network element database by the service quality and/or error

monitoring device regarding inadmissible deviations (Col. 2, Lines 35-37, 46-47;

collected data of previous executions are compare with current performances and alerts

the user automatically if the SLA is in danger of not being met), and generating a

message about a reduction in the expected service capacity in the event of an

inadmissible deviation (Col. 2, Lines 35-37, 46-47; ASM reports these abnormal

performances to the user automatically if the SLA is in danger of not being met).

4.   Regarding Claim 12, Main discloses all the limitations of Claim 11 above. Main

further discloses of storing information relating to network elements specified as

relevant to the provision of the service with regard to a service level agreement in the

network element database (Col. 5, Line 59 – Col. 6, Line 4; fourth database stores data

specifying job flow for each SLA collected and the fifth database stores the high level

qualifiers/application groups of SLA jobs that are to be monitored each day) and

recording measured values relating to the network elements specified as relevant to the

provision of the service with regard to the service level agreement (Col. 5, Lines 59-67 –

Col. 6, Lines 1-4; second database stores prior run data, the third database stores

clocktime data, and fourth database stores data specifying job flow for each SLA

collected).

5.   Regarding Claims 13 and 14, Main discloses all the limitations of Claims 11 and

12 above. Main further discloses that the message sent to the user contains a

statement about service quality and/or service availability (Col. 9, Lines 49-58; when

SLA is in jeopardy the respective platforms are shown in red, highlighted or blinking).

6.   Regarding Claims 18 – 20, Main discloses all the limitations of Claims 11, 12 and

13 above. Main further discloses that the information stored in the network element

database describes admissible operating ranges of the network elements (Figs. 5 and

7; Col. 8 Lines 65 – Col. 9, Line 12; Col. 10, Lines 15-22 and 30-32; job record and

current job times are compared to determine if they meet SLA requirements and the

high level qualifiers/application groups of SLA jobs are stored and viewable through

server).

7.   Regarding Claims 22 – 24, Main discloses all the limitations of Claims 11, 12 and

13 above. Main further discloses that the network elements affected by the

establishment, modification and/or deletion of a service are configured by a network

control system accessing the information stored in the network element database (Col.

9, Line 67 – Col. 10, Line 2; Col. 10, Lines 9-33; user has the option of creating,

modifying or deleting SLAs; these configurations are retrieved from and stored in the

high level qualifiers/application groups database).

8.   Regarding Claims 26 and 27, Main discloses all the limitations of Claims 11 and

12 above. Main further discloses that the establishment and/or modification of the

service initiates the recording of measured values relating to network elements specified

by the service level agreement as relevant to provision of the service.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

Claims 15 – 17, 21, 25, and 28 – 31 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Main as applied to Claims 1 above, in view of U.S. Patent

6,556,659 B1, invented by Michel K. Bowman-Amuah (hereinafter referenced as "Bowman-Amuah").

9.   Regarding <u>Claims 15 – 17 and 31</u>, Main, discloses all the limitations of Claims 11, 12 and 13 as stated above. Main, however, does not specifically disclose that the message about a reduction in service capacity is transmitted to a network control system for rectification of the reduction in service capacity.

Bowman-Amuah discloses the use of network management components to provide comprehensive solutions to address the discrepancies found in the network regarding performance (Abstract; Col. 49, Lines 1 – 27). Bowman-Amuah further discloses that the message about a reduction in service capacity is transmitted to a network control system for rectification of the reduction in service capacity (Abstract; Fig. 15B-1, 15B-2, and 15B-3; Col 49. Line 53 – Col. 51, Line 30; fault management component sends alerts to user and network node manager, which in turn sends information to the remedy gateway to resolve performance issue). It would have been obvious to one skilled in the art at the time the application was filed to send a message to the network management component regarding performance discrepancies that affected the SLAs. All the necessary data to determine whether certain services or jobs met the SLA standards established within the system has already been collected and compared in the monitoring system disclosed by Main. The obvious reason to monitor for performance discrepancies is to resolve the discrepancies to meet the SLA levels. Many service providers agree to SLAs for their services at higher costs to the user. If their services do not meet the SLAs described, the service providers will either discount

the services provided, or worse, lose the customer to a competitor. The notification is

sent to the management components to allow service providers to maintain their

services to the agreed upon levels and, therefore, meet their SLAs.

10.   Regarding Claim 21, Main, in view of Bowman-Amuah, discloses all the

limitations of Claim 15 above. Main further discloses that the information stored in the

network element database describes admissible operating ranges of the network

elements (Figs. 5 and 7; Col. 8 Lines 65-67 – Col. 9, Lines 1 –12; Col. 10, Lines 15-22

and 30-32; job record and current job times are compared to determine if they meet

SLA requirements and the high level qualifiers/application groups of SLA jobs are stored

and viewable through server).

11.   Regarding Claim 25, Main, in view of Bowman-Amuah, discloses all the

limitations of Claim 15 above. Main further discloses that the network elements affected

by the establishment, modification and/or deletion of a service are configured by a

network control system accessing the information stored in the network element

database (Col. 9, Line 67 – Col. 10, Lines 1-2; Col. 10, Lines 9-33; user has the option

of creating, modifying or deleting SLAs; these configurations are retrieved from and

stored in the high level qualifiers/application groups database).

12.   Regarding Claims 28 – 30, Main discloses a communication network monitoring

system (Abstract, Fig. 5; system and method of recognizing job performance

discrepancies) comprising of a service providing device for establishing and/or

modifying a service (Col. 9, Line 67 – Col. 10, Line 2; Col. 10, Lines 9-33; user has the

option of creating, modifying or deleting SLAs), a communication connection

management device for storing information relating to the functional properties and

topological arrangement of network elements relevant to provision of the service in a

network element database assigned to the communication connection management

device (Abstract; Col. 5, Line 59– Col. 6, Line 4; system compares actual performance

against SLA, identifies discrepancies, and analyzes the impact to other jobs in the job

stream; multiple databases to stores data specifying job flow for each SLA collected,

high level qualifiers/application groups of SLA jobs that are to be monitored each day,

prior run data and clocktime data), for assigning this information to the service and for

providing the information stored in the network element database to a service quality

and/or error monitoring device (Col. 2, Lines 35-37; collected data of previous

executions are compare with current performances), and a service quality and/or error

monitoring device for comparing recorded measured values with the information stored

in the network element database for inadmissible deviations (Col. 2, Lines 35-37, 46-47;

collected data of previous executions are compare with current performances and alerts

the user automatically if the SLA is in danger of not being met) and, in the event of an

inadmissible deviation, for generating a message about a reduction in service capacity

giving details of the service concerned (Col. 9, Lines 49-58; when SLA is in jeopardy the

respective platforms are shown in red, highlighted or blinking). Main, however, does not

specifically disclose that the network monitoring system is used to also control the

processes within the network.

Bowman-Amuah discloses the use of network management components to

provide comprehensive solutions to address the discrepancies found in the network

regarding performance (Abstract; Col. 49, Lines 1 – 27). It would have been obvious to

one skilled in the art at the time the application was filed to implement a network

management component to a network monitoring system that alerted the user of

performance discrepancies that affected SLAs. All the necessary data to determine

whether certain services or jobs met the SLA standards established within the system

has already been collected and compared. The obvious reason to monitor for

performance discrepancies is to resolve the discrepancies to meet the SLA levels.

Many service providers agree to SLAs for their services at higher costs to the user. If

their services do not meet the SLAs described, the service providers will either discount

the services provided, or worse, lose the customer to a competitor. The management

components will allow service providers maintaining their services to the agreed upon

levels and, therefore, meet their SLAs.

13.   Regarding <u>Claims 29 and 30</u>, Main, in view of Bowman-Amuah, discloses all the

limitations of Claim 28 above.

Bowman-Amuah further discloses the use of a computer program to enable a

computer system to perform the features described above in Claim 28 (Col. 6, Lines 43-

57). Furthermore, Bowman-Amuah discloses the use of a removable storage device to

store the computer program (Col. 6, Lines 37-42). It would have been obvious to one

skilled at the time the application was filed to use a computer program to enable a

computer system to perform the described methods since the computer system will not

perform without the proper executable code stored therein. It would also have been

obvious to store the computer program within a removable storage unit to transfer the

program to multiple systems.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Contacts

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-

1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glenton B. Burgess, can be reached on (571) 272-3949. The fax phone

number for submitting all Official communications is (703) 872-9306. The fax phone

number for submitting informal communications such as drafts, proposed amendments,

etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at (866) 217-9197 (toll-free).

TKK

February 20, 2008
/Glenton   Burgess/
Supervisory Patent Examiner, Art Unit 2153